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*Attorneys for the United States*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD C. ENGEL,

Defendant.

2:16-CR-46-GMN-PAL

**GOVERNMENT'S MOTION FOR  
LEAVE TO FILE SUR-REPLY TO  
DEFENDANT ENGEL'S REPLY TO  
GOVERNMENT'S RESPONSE IN  
OPPOSITION TO HIM MOTION  
FOR NEW TRIAL**

**CERTIFICATION: The local criminal rules do not provide a time frame to  
file a sur-reply. This motion is filed within seven days of Engel having filed  
his reply.**

The United States of America, by and through undersigned counsel,  
respectfully seeks leave of Court to file a sur-reply in opposition to Engel's motion

1 for new trial. *See* ECF Nos. 3183 (Motion for New trial), ECF No. 3198  
2 (Government’s Response), and 3204 (Reply to Response).<sup>1</sup>

3       The government seeks leave because Engel raises new arguments in his  
4 reply. In his motion for new trial, Engel argued that he was entitled to a new trial  
5 or dismissal on *Brady* grounds because the Court dismissed the superseding  
6 indictment against the Tier 1 defendants. The government responded that Engel’s  
7 “me-too” argument did not meet the demanding *Brady* standard that requires a  
8 case-by-case fact intensive examination. In reply, Engel makes new arguments  
9 attempting to meet the *Brady* standard.

10       Engel also makes new arguments in support of his insufficiency of the  
11 evidence claims. First, he argues that his arguments should not be time-barred  
12 because the Court has inherent power to achieve justice, notwithstanding the 14-  
13 day filing time in Rule 33. Second, he argues that the evidence was insufficient to  
14 support the extortion count because it did not prove who was extorted or whether  
15 the cattle extorted belonged to the United States.

16       In fairness, the government ought to be able to respond to Engel’s new  
17 arguments.

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23 <sup>1</sup> The government stands on its response to Engel’s motion for release. ECF Nos. 3180 (Motion for Release), 3198 (Consolidated Response).

1       **WHEREFORE**, the Court should grant the government leave to file the  
2 attached sur-reply.

3  
4       **DATED** this 12<sup>th</sup> day of March, 2018.

5                               Respectfully submitted,

6                               DAYLE ELIESON  
7                               United States Attorney

8                               STEVEN W. MYHRE  
9                               First Assistant United States Attorney

10                              s/Daniel R. Schiess  
11                              NADIA J. AHMED  
12                              DANIEL R. SCHIESS  
13                              Assistant United States Attorneys

14                              *Attorneys for the United States*

15       **IT IS SO ORDERED.**

16       **DATED** this 23 day of April, 2018.

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19       Gloria M. Navarro, Chief Judge  
20       United States District Court  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing Motion and Attachment were served upon counsel of record via cm/ecf.

**DATED** this 12th day of March, 2018.

s/Daniel R. Schiess  
DANIEL R. SCHIESS  
Assistant United States Attorney